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5 **IN THE UNITED STATES DISTRICT COURT FOR THE**
6 **EASTERN DISTRICT OF CALIFORNIA**
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8 JAY GILL,) NO. 1:12-CV-01011 AWI GSA
9)
10 Plaintiff,) ORDER DISMISSING
11 v.) DEFENDANT GLAYTON
12 DAVID SIMPSON, an individual, et al.,) LOGOMASINI WITHOUT
13) PREJUDICE IN LIGHT OF
14) STIPULATION OF DISMISSAL
15 Defendants.)
16 _____)

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18 On August 21, 2012, the Plaintiff filed a stipulation of dismissal of Defendant Clayton
19 Logomasini only, without prejudice, pursuant to Rule 41(a)(1)(ii).

20 Rule 41(a)(1), in relevant part, reads:

21 (A) . . . the plaintiff may dismiss an action without a court order by filing: (I) a
22 notice of dismissal before the opposing party serves either an answer or a motion
23 for summary judgment; or (ii) a stipulation of dismissal signed by all parties who
24 have appeared . . . (B) Unless the notice or stipulation states otherwise, the
25 dismissal is without prejudice.

26 Rule 41(a)(1)(A)(ii) thus allows the parties to dismiss an action voluntarily after service of an
27 answer by filing a written stipulation to dismiss signed by all of the parties, although an oral
28 stipulation in open court will also suffice. Carter v. Beverly Hills Sav. & Loan Asso., 884 F.2d
1186, 1191 (9th Cir. 1989); Eitel v. McCool, 782 F.2d 1470, 1472-73 (9th Cir. 1986). Once the
stipulation between the parties who have appeared is properly filed or made in open court, no
order of the court is necessary to effectuate dismissal. Fed. R. Civ. Pro. 41(a)(1)(A)(ii); Eitel,
782 F.2d at 1473 n.4. “Caselaw concerning stipulated dismissals under Rule 41(a)(1)(A)(ii) is
clear that the entry of such a stipulation of dismissal is effective automatically and does not

1 require judicial approval.” In re Wolf, 842 F.2d 464, 466 (D.C. Cir. 1989); Gardiner v. A.H.
2 Robins Co., 747 F.2d 1180, 1189 (8th Cir. 1984); see also Gambale v. Deutsche Bank AG, 377
3 F.3d 133, 139 (2d Cir. 2004); Commercial Space Mgmt. Co. v. Boeing Co., 193 F.3d 1074, 1077
4 (9th Cir. 1999) cf. Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997) (addressing
5 41(a)(1)(i). A plaintiff may dismiss some or all of the defendants, so long as the subject
6 defendant has not filed an answer or motion for summary judgment. Pedrina v. Han Kuk Chun,
7 987 F.2d 608, 609-10 (9th Cir. 1993).

8 Because Plaintiff has filed a voluntary dismissal under Rule 41(a)(1)(ii) as to only
9 Defendant Clayton Logomasini, without prejudice, that is signed by all parties who have made an
10 appearance, this case has terminated as to this Defendant only. See Fed. R. Civ. Pro. 41(a)(1)(ii);
11 In re Wolf, 842 F.2d at 466; Gardiner, 747 F.2d at 1189; see also Gambale, 377 F.3d at 139;
12 Commercial Space Mgmt, 193 F.3d at 1077; cf. Wilson, 111 F.3d at 692.

13 Therefore, IT IS HEREBY ORDERED that Defendant Clayton Logomasini is
14 DISMISSED from this case without prejudice in light of Plaintiff’s filed and properly signed
15 Rule 41(a)(1) voluntary dismissal.

16 IT IS SO ORDERED.

17 Dated: August 28, 2012

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CHIEF UNITED STATES DISTRICT JUDGE